

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

IN RE: REALPAGE, INC., RENTAL
SOFTWARE ANTITRUST LITIGATION
(NO. II)

Case No. 3:23-md-3071
MDL No. 3071

Judge Waverly D. Crenshaw, Jr.

This document relates to:
Navarro v. RealPage, Inc., et al.,
No. 3:23-cv-00329

**DECLARATION OF STEVE W. BERMAN IN SUPPORT OF
HAGENS BERMAN'S APPLICATION FOR APPOINTMENT AS LEAD COUNSEL
ON BEHALF OF THE STUDENT RENTAL PLAINTIFFS**

I, STEVE W. BERMAN, declare as follows:

1. I am the founder and managing partner at Hagens Berman Sobol Shapiro LLP, counsel of record for Plaintiff Gabriel Navarro in the above-titled action; I am licensed to practice before all the courts in Washington and Illinois ; I have personal knowledge of the facts stated in this declaration and would competently testify thereto, if called upon; I make this declaration personally in support of Hagens Berman Sobol Shapiro LLP's ("Hagens Berman") Application for Appointment as Lead Counsel on Behalf of the Student Rental Plaintiffs and for Stranch, Jennings, & Garvey ("Stranch, Jennings") to be appointed as liaison counsel on behalf of the Student Rental Plaintiffs.
2. I and my firm are deeply and enthusiastically committed to prosecuting this case. If the Court appoints Hagens Berman as lead counsel for the Student Rental Plaintiffs in this litigation, I will devote myself and the Hagens Berman team working on this matter to the prosecution and success of this case.

HAGENS BERMAN COMMITS TO PROTECTING STUDENTS

3. Hagens Berman is a leader in antitrust class action litigation and is one of the few firms that takes these cases to trial. For example, in September 2019, I co-led the trial team in a ten-day trial before N.D. Cal. Judge Claudia Wilken, in a case brought on behalf of student athletes. The case challenged the National Collegiate Athletic Association (NCAA)'s rules relating to caps on compensation available to college student athletes. At trial, the factfinder imposed an injunction against the NCAA—as a result, student athletes have been able to receive more aid from their schools. The Supreme Court unanimously affirmed the district court's decision. *See NCAA v. Alston*, 141 S. Ct. 2141 (2021). Class members recovered more than \$200 million as part of a settlement with the NCAA and the NCAA agreed to no longer restrict compensation to the "Grant in Aid Amount", but

to instead allow compensation up to and in some cases exceeding the cost of attendance, a difference of between \$4,000 and over \$6,000 to athletes on a yearly basis.

HAGENS BERMAN HAS WON CLASS RECOVERY IN RECORD-BREAKING ANTITRUST ACTIONS

4. Hagens Berman has led some of the most complicated antitrust cases of the last decade, resulting in settlements of hundreds of millions of dollars for consumers and businesses nationwide. Examples of its success in antitrust cases include:
- *Cameron v. Apple Inc.*, No. 4:19-cv-03074 (N.D. Cal.): Hagens Berman was appointed lead counsel for iOS app developers in this complex action alleging that Apple monopolized U.S. distribution services for iOS apps and in-app digital products, which resulted in commission overcharges to U.S. iOS developers. In fall 2021, the parties reached a settlement that will result in the creation of a \$100 million Small Developer Assistance Fund and important changes to Apple's App Store policies and practices. This settlement was reached with defense counsel present in the current action (Gibson Dunn).
 - *In re E-Books Antitrust Litig.*, No. 11-md-2293 (S.D.N.Y.): Hagens Berman was appointed co-lead counsel in this complex litigation involving six defendants, 33 State Attorneys General and the United States Department of Justice. Settlements in the case totaled more than \$550 million, representing recovery of approximately 200% of class members' damages.
 - *In re Visa Check/Mastermoney Antitrust Litig.*, No. 96-cv-05238 (E.D.N.Y.): Hagens Berman lead this record-breaking antitrust case against credit card giants Visa and MasterCard, which resulted in a \$3.05 billion cash settlement and injunctive relief valued at more than \$20 billion.

HAGENS BERMAN HAS LED THE PROSECUTION OF INFORMATION EXCHANGES

5. Hagens Berman is on the forefront of many major antitrust cases, including cases where defendants used third-party intermediaries to share their pricing as is the case here. For example, Hagens Berman has been appointed as lead counsel for the consumer classes in the *Broilers*, *Pork*, and *Turkey* antitrust cases. *See In re Broiler Chicken Antitrust Litig.*, No. 1:16-cv-08637 (N.D. Ill.); *In re: Pork Antitrust Litig.*, No. 1:18-cv-01776 (D. Minn.); and *In re: Turkey Antitrust Litig.*, No. 1:19-cv-08318 (N.D. Ill.).

6. *Broilers, Pork, and Turkey* allege that the defendants—chicken, pork, and turkey processors in the United States—used a third-party intermediary to exchange information about their prices, which resulted in anticompetitive effects.
7. In addition, Hagens Berman has been appointed as lead counsel in litigation against poultry and red meat processors for exchanging wage data to deflate plant workers wages. *See Jien, et al. v. Perdue Farms, Inc., et al.*, No. 1:19-cv-2521-SAG (D. Md.); *Brown v. JBS USA Food Co.*, No. 1:22-cv-02946-PAB-STV (D. Co.). The Department of Justice filed its own subsequent case against poultry processing companies for wage fixing that drew upon the civil plaintiffs’ investigation.
8. These cases are actively being litigated, and the classes have already achieved significant results. The district court in *Broilers* has granted class certification and settlements to date totaling \$180 million for the class. In *Pork*, class certification is pending and settlements to date total more \$95 million. Cumulatively, Hagens Berman has won \$450 million for class members in these cases. The proposed team for this case includes lawyers who have worked on *Broilers, Pork, Turkey, Jien*, and *Brown* extensively.

HAGENS BERMAN DEVELOPED THIS CASE, WHICH IMPLICATES UNIQUE DEFENDANTS, HOUSING MARKETS, AND DISCOVERY

9. Based on public filings in the MDL docket to date, Hagens Berman is the only firm that has investigated RealPage’s impact in the unique market for student housing. By contrast, all other cases across the country describe how one of defendants here, RealPage, harmed traditional multi-family renters by acting as a third-party intermediary that allowed competitors to share their pricing. As a result of Hagens Berman’s investigation, student renters brought a novel complaint, which: (a) implicates a unique set of defendants; (b) implicates certain unique rental markets specific to students and student housing; (c)

alleges a different class period than the other RealPage complaints; and (d) based on Hagens Berman's current investigative work, will require distinct discovery (and discovery responsibilities) as the case proceeds.

10. **Unique Defendants.** Plaintiffs name (1) CA Ventures Global Services, LLC; (2) Campus Advantage, Inc.; (3) Cardinal Group Holdings LLC; and (4) D.P. Preiss Co., Inc., as Defendants in the *Navarro* complaint. These entities, which rent largely to students, do not appear to have been named in any other complaints. Plaintiffs anticipate naming additional unique defendants in their forthcoming amended complaint.
11. **Unique Housing Markets.** Because student housing often clusters around universities and colleges, there are a number of "college towns" that will likely not be included in the multifamily action that nevertheless include significant numbers of Defendants' properties, i.e., student housing-specific properties. As one example, Campus Advantage, Inc. manages properties in the following cities: Auburn, Alabama (The Beacon, West & Wright); Tallahassee, Florida (Forum Tallahassee); Columbia, South Carolina (The Rowan), Knoxville, Tennessee (Slate at 901); Eugene Oregon (Titan Court, The Soto). According to work done by Hagens Berman attorneys, each of the cities listed above has at a minimum seven properties managed by Defendants in a nearby radius to college campuses.
12. **Unique Class Period.** The class period in the *Navarro* action is January 1, 2010 to the present. By contrast, as stated at the hearing, the multifamily complaints filed to date generally feature class dates beginning between 2015 to 2018.
13. **Unique Discovery.** Plaintiffs expect that the unique factors above will in turn require substantial unique discovery, e.g., discovery from (a) unique defendants focused on (b)

certain unique areas from (c) unique time periods. Lawyers representing multi-family renters would have no incentive to pursue this discovery.

14. More broadly, the depth and detail of the allegations in the *Navarro* complaint are one indication of Hagens Berman's efforts. Hagens Berman extensively investigated the unique aspects of the student housing market, the individual defendants, and the facts alleged in the complaint. This includes analyses of articles, research reports, SEC filings, conference calls, and investor presentations concerning the student housing market and the individual defendants.
15. Hagens Berman spent many hours working with economists to identify critical factors in the technology utilized by property management companies which made the student housing market more susceptible to collusion. For example, the high-cost barriers to enter the market, the high-cost barriers for students to exit, the lack of substitutes leading to inelastic demand, and the high concentration of lessors in college towns, are a few characteristics that prevent discipline of the cartel price fixing.

**HAGENS BERMAN HAS CONTINUED ITS EFFORTS TO DEVELOP THE
CASE AND MEET COURT DEADLINES**

16. This work has not stopped since the filing of the initial *Navarro* action. The attorneys on this team have committed substantial hours talking to student housing renters in different college towns across the country and have identified additional clients who will more broadly represent the proposed student rental class.
17. Further, Hagens Berman has retained investigators to further develop the Student Rental Plaintiffs' claims and they are at work to meet the June 16 amendment deadline. Hagens Berman has also retained experts to develop the facts and unique characteristics of the student housing market as well as to analyze the plausibility of a conspiracy and the

impact of that conspiracy on the proposed class. Hagens Berman will present these allegations and additional clients in an amended complaint that it is working hard to finalize by the Court's deadline of June 16.

18. Hagens Berman has also developed the case by working cooperatively and respectfully with plaintiffs and defense counsel. Hagens Berman has previously worked extensively with numerous Plaintiff firms involved in this litigation, including working as co-lead counsel with Berger Montague, Lieff Cabraser, and Hausfeld in various antitrust matters. Hagens Berman has also worked effectively with numerous defense counsel present in this litigation as well. For example, Hagens Berman recently reached a \$100 million dollar settlement with Apple, in a case where a Gibson Dunn team led by Jay Srinivasan represented Apple. *See Cameron v. Apple Inc.*, No. 4:19-cv-03074 (N.D. Cal.).
19. To date, Hagens Berman has continued to work cooperatively with plaintiffs' counsel by already proposing a list of acceptable mediators.

**HAGENS BERMAN HAS THE RESOURCES
TO PROSECUTE THESE CLAIMS**

20. Hagens Berman has more than 80 lawyers, with offices in Seattle, Berkeley, Boston, Chicago, Los Angeles, New York, Phoenix, San Diego, and abroad. Since its founding in 1993, Hagens Berman has represented plaintiffs in a broad spectrum of complex, multi-party antitrust cases. Hagens Berman was named to the 2022 Elite Trial Lawyer – Litigation Firm of the Year in the Antitrust Category by the National Law Journal. Hagens Berman was also named Practice Group of the Year—Competition and Class Action Group of the Year by Law 360 in 2021 and 2022 (respectively) (*see* Exs. F and G hereto), and honoree for Outstanding Antitrust Litigation Achievement in Private Law Practice” by the American Antitrust Institute in 2021.

21. This litigation team has demonstrated their dedication and commitment in the many complex cases discussed above, and Hagens Berman will bring the same resources and commitment to ensure a successful outcome of this case. Hagens Berman is well-capitalized and possesses some of the largest and most robust investigatory and litigation teams in their field. Hagens Berman's lawyers are experienced, diverse professionals dedicated to enforcing consumer protection and antitrust laws. The firm consistently advances millions of dollars in litigation costs without third-party funding in matters of comparable size and complexity.
22. Hagens Berman has also developed policies to ensure cost-effective representation of the class. For example, Hagens Berman has a robust timekeeping policy to ensure timely and detailed records of all billable time. Time must be contemporaneously tracked by attorneys in time-keeping software, according to time codes that are standard in large antitrust cases. Time descriptions must be sufficiently detailed to enable anyone reviewing the entries to identify the specific activity performed, the time spent on the activity and its purpose, and the relationship to the matter. Time must be tracked in tenth-of-an-hour increments. Timekeepers who do not follow the policy of entering time contemporaneously are subject to financial penalties to incentivize compliance. Timekeeping is considered a critical job function and tardiness is not tolerated. Hagens Berman also audits this time every month and can provide regular reports to the Court, if requested.
23. Hagens Berman is also committed to encouraging diversity in the practice of law. The proposed litigation team here includes three men and two women with varied experience

levels. This team is committed to developing opportunities for new attorneys to have meaningful opportunities in court, with appropriate supervision.

24. Attached hereto as **Exhibit A** is a true and correct copy of Hagens Berman's firm resume.
25. Attached hereto as **Exhibit B** is a true and correct copy of Stranch, Jennings & Garvey's firm resume. Hagens Berman has worked with the Stranch firm on cases throughout the country and is currently working on a proposed class case in this district with the firm. The two firms and their lawyers are not newly working together on this case but have been friends and colleagues for over a decade.
26. Attached hereto as **Exhibit C** is a true and correct copy of the Order Appointing Hagen Berman Sobol Shapiro LLP as Interim Class Counsel with Respect to the Student Housing Class, ECF. No. 78, No. 2:22-cv-01552-RSL (W.D. Wash.).
27. Attached hereto as **Exhibit D** is a true and correct copy of the Order Appointing Interim Class Counsel and Liaison Counsel in *In re Crop Protection Prods. Loyalty Program Antitrust Litig.*, No. 1:23md3062-JEP-TDS (M.D. N.C. June 4, 2023).
28. Attached hereto as **Exhibit E** is a true and correct copy of Byron Koenig, *New Antitrust Cases Drop Across The Board*, Law360, April 19, 2023.
29. Attached hereto as **Exhibit F** is a true and correct copy of Christopher Cole, *Competition Group of the Year: Hagens Berman*, Law360, February 8, 2022.
30. Attached hereto as **Exhibit G** is a true and correct copy of Donald Morrison, *Class Action Group of the Year: Hagens Berman*, Law360, February 9, 2023.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 6th day of June, 2023, at Seattle, Washington.

/s/ Steve W. Berman
STEVE W. BERMAN

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 6th day of June, 2023, pursuant to paragraph 9 of the Court's Practice and Procedures Notice entered April 19, 2023 (Dkt. No. 2), the foregoing document was electronically filed with the Clerk of Court and served by operation of the Court's electronic filing system upon all parties of record.

/s/ Steve W. Berman

Steve W. Berman